ORAL ARGUMENT: NOT SCHEDULED

15-1113;
15-1143

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ARC BRIDGES, INC.,

Petitioner/Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent/Cross-Petitioner.

Petition for Review and Cross-Petition for Enforcement
of Decision and Order of the National Labor Relations Board
Case No. 13-CA-44627 – Mark Gaston Pearce, *Chair*
Philip A. Miscimarra and Kent Y. Hirozawa, *Members*

FINAL REPLY BRIEF OF PETITIONER/CROSS-RESPONDENT, ARC BRIDGES, INC.

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GLOSSARY

Abbreviation	Meaning
Act	National Labor Relations Act
AFP	American Federation of Professionals
ALJ	Administrative Law Judge
Board	National Labor Relations Board
BRIDGES	Petitioner/Cross-Respondent Arc BRIDGES, Inc.
NLRA	National Labor Relations Act
NLRB	National Labor Relations Board
R. Ex.	Exhibit offered by Respondent, Arc BRIDGES, Inc., during the hearing held on July 28 and 29, 2008 before Administrative Law Judge Gerald A. Wacknov
Tr.	Transcript of the hearing held on July 28 and 29, 2008 before Administrative Law Judge Gerald A. Wacknov
Union	American Federation of Professionals

SUMMARY OF ARGUMENT

The Board's conclusion that BRIDGES' decision to refrain from extending a wage increase to represented employees during collective bargaining negotiations was unlawfully motivated is clearly not supported by substantial evidence, nor is it keeping with established precedent. The Board cannot rely on alleged inappropriate statements made away from the bargaining table to support a finding of animus on the part of the decision-maker without evidence of a connection between the statements, and the decision-maker herself. The Board also misstates Executive Director Kris Prohl's budgetary authority by failing and refusing to grasp the simple notion that dollars spent on wages is but one component of an employer's total labor costs. From that, the Board's conclusion that the subject wage increase was "authorized" and subsequently "withheld" due to an unlawful reason, is a simple leap of illogic, devoid of any cognizance of BRIDGES' obligation to bargain in good faith pursuant to Section 8(a)(5) of the Act. The Board's pretext analysis, meanwhile, plainly ignores relevant evidence as well as testimony credited by the ALJ and accepted as established fact by this Court, in deference to statements that are clearly unreliable, and as discussed below, immaterial to Prohl's motivation in refraining from implementing a wage increase.

Absent discriminatory motive, BRIDGES was privileged to extend the wage increase to unrepresented employees, given the high stakes imposed by the Union.

In reaching a different result, the Board clearly ignores the Union's economic demands beyond wages, the relevant bargaining history of the parties, and finally, BRIDGES' good faith efforts to reach agreement.

ARGUMENT

A. Substantial Evidence Does Not Support The Board's Conclusion That BRIDGES' Decision To Refrain From Implementing A Wage Increase Was Motivated By Antiunion Animus.

The Board is correct, and BRIDGES does not dispute that, absent an unlawful motive, an employer is free to give a wage increase to unrepresented employees while denying the same increase to represented employees in the course of bargaining with the Union. *Shell Oil Co.*, 77 N.L.R.B. 1306, 1310 (1948). As described more fully below, however, evidence relied upon by the Board is not sufficient to support a finding that **Prohl's decision** was motivated by antiunion animus. (Emphasis added.) Moreover, the Board's pretext analysis is flawed for various reasons, including the fact that it relies on statements that are demonstrably unreliable. In sum, the Board has clearly ignored record evidence to arrive at its preferred outcome—a finding of antiunion animus having infected Prohl's decision to extend a wage increase only to its unrepresented staff. As such, BRIDGES was privileged to refrain from extending the wage increase that is the subject of this dispute, in favor of good faith bargaining.

B. The Board May Not Rely On Isolated Statements Made Away From The Bargaining Table To Support Its Finding Of Antiunion Animus.

Under the theory espoused in *Wright Line, a Division of Wright Line, Inc.*, 251 N.L.R.B. 1083 (1980), the Board may not rely on isolated statements made away from the bargaining table to support its finding that Prohl's decision was motivated by antiunion animus. *See Children Services Int. Inc.*, 347 N.L.R.B 67 (2006); *Ithaca Journal-News, Inc.*, 259 N.L.R.B. 394, 396 (1981). The Board, contends, however, that connecting the challenged decision to antiunion animus of the decision-maker is a legal hurdle it does not have to meet. (Board Br., p. 23.) In doing so, the Board fails to explain why prior precedent is not controlling here, and actually cites a recent case from this Court in support of its argument which plainly states otherwise. (Board Br., p. 24.)

The Board's contention that the Fourth Circuit's decision in *Southern Maryland Hosp. Ctr. v. NLRB*, 801 F.2d 666 (4th Cir. 1986) is distinguishable is not correct. (Board Br., p. 25-26.) Like in this case, the Board panel there relied upon certain isolated and unreliable statements made away from the bargaining table to support a finding that a CEO's decision to withhold a year-end bonus was motivated by antiunion animus. *Id.* at 670-71. Both a supervisor and the employer's comptroller were reported to have stated the bonus had not been awarded because of the Union. *Id.* at 671. The CEO said nothing which would indicate his motivations with respect this decision, but the court acknowledged his

past actions "generally showed no love for the unions." *Id.* The Fourth Circuit refused to enforce the Board's Order on the basis that the isolated statements were not evidence of antiunion animus because they were not attributable to the CEO. *Id.* Thus, contrary to the Board's contentions, the decision is remarkably analogous to this case.

Contrary to the Board's contention, this Court's recent decision in *Inova Health Sys. v. NLRB*, ___ F.3d ___, 2015 WL 4490275, at *8 (D.C. Cir. 2015), recited the *Wright Line* test referencing a causal nexus requirement as part of the General Counsel's burden under *Wright Line*. (Board Br., p. 24.) The Board ignores what this Court expressly articulated as being necessary to find unlawful motivation as the basis for a challenged decision.

In *Inova,* the ultimate decision-maker, a doctor and CEO of a hospital, terminated an employee on the advice of other "high-level managers" who engaged in prohibited antiunion conduct. *Id.* at *10. These same managers: (1) involved the doctor in the decision; (2) controlled all the information on which the termination decision was made; (3) deliberately obstructed efforts of the discharged employee's supporters to weigh in on the termination decision; and (4) actually proposed terminating the employee. *Id.* As such, this Court held it was "eminently reasonable' for the Board to rely on the ***critical causal role*** played by those 'high-level corporate managers, [ ] because [the doctor's] decision…was

directly set in motion and driven by those managers." *Id.* (emphasis supplied.) Here, of course, there is no evidence that Teso or Gronendyke played any role in Prohl's decision to refrain from implementing a mid-bargaining adjustment of wages, nor that the alleged statements attributed to them were based on anything Prohl may have communicated to them.

The Court also cited its previous opinions, which hold a connection between a decision-maker's antiunion animus, and a challenged employment decision is necessary to find that Section 8(a)(3) has been violated. *Id.* at *10-*11 (citing *Ross Stores, Inc. v. NLRB*, 235 F.3d 669, 673-74, n. 7 (D.C. Cir. 2001) (holding antiunion statements of a supervisor did not prove the company's animus because there was not "any evidence that [the supervisor] was involved in [the employee's] discharge"); *MECO Corp. v. NLRB*, 986 F.2d 1434, 1437 (D.C. Cir. 1993) (holding antiunion comments of two supervisors did not support a finding of antiunion animus because neither supervisor had anything to do with a contested discharge)).

In further support of its argument, the Board cites to *The TM Group, Inc.*, 357 N.L.R.B. No. 98, at *1 fn. 2 (2011), where the Board stated in a footnote that "a 'nexus' is not an element of the General Counsel's initial burden under *Wright Line*." (Board Br., p. 23.) But that decision is inapposite to the different question here. *TM Group* involved the termination of an employee ostensibly for economic

reasons but who, during the meeting to communicate that decision, was chastised for her "betrayal" in having committed a "purported breach of [a] confidentiality policy" by criticizing the employer's cost-cutting measures. *Id.* at *17, *19. There, unlike here, the challenged action was directly tied to activities protected by Section 7 of the Act, by the very persons who effected the employee's discharge. There is no such link here.

Consequently, the Board in *TM Group* was not required to assess whether isolated statements of non-decision-makers, evidencing generalized antiunion animus, satisfied the *Wright Line* burden. Even if germane to the present case, however, the decision is at odds with decisions from this Court as well as prior Board decisions, such as *Children Services Int. Inc.*, 347 N.L.R.B. 67 (2006) and *Ithaca Journal-News, Inc.*, 259 N.L.R.B 394, 396 (1981), which clearly hold otherwise.

In the alternative, the Board argues the evidence of record does indicate the requisite causal nexus exists to sustain the General Counsel's burden and cites to the statements themselves in support of its argument. (Board Br., p. 24.) These statements are not attributable to Prohl, however and, at most, amount to nothing more than independent Section 8(a)(1) violations. They do not support a finding of antiunion animus as having influenced bargaining positions taken by Prohl and BRIDGES. Moreover, the statements are clearly unreliable.

In sum, there is absolutely no evidence to support the connection the Board and this Court have required as necessary to sustain the General Counsel's burden of tying antiunion animus to the complained of action alleged to have violated Section 8(a)(3). Unlike in *Inova*, the Board points to no evidence that either Bonnie Gronendyke or Raymond Teso played "a critical causal role" in Prohl's decision to refrain from extending a wage increase to represented employees, which Prohl confirmed was her decision, alone. (Tr. 320, 342-44, App. at 190, 193-95.) Nor is there evidence that either of them, were in any way acting upon information received from Prohl, even if such statements were found to have been made, despite the many problems with credibility those claiming to have heard the statements have presented. (Member Miscamarra's dissent at *11.) As such, the alleged animus founded upon their respective statements is not directly related to, nor can it explain, Prohl's motivation in withholding the wage increase.

C. The Board's Pretext Analysis Is Clearly Erroneous.

The Board's rejection of BRIDGES' reasons for not increasing wages for represented employees in October, 2007, as pretextual, presumes the reasons advanced are otherwise legitimate. Unfortunately for the Board, its findings as to pretext are not supported by substantial evidence or, in some cases, are purely speculative. The record evidence is undisputed that in July, 2007, the AFP tendered economically overwhelming demands to which BRIDGES effectively

pleaded poverty, provided detailed financial information, and agreed to open its books. (Tr. 133, 236, R. Ex. 3, App. at 67, 174, 157.) Immediately after doing so, the AFP canceled the next scheduled bargaining sessions, and took a strike vote amongst BRIDGES represented employees. (R. Ex. 6, Tr. 240, App. at 160, 178.) Prohl testified between the time of the demands being made in July 2007 and October 2007, there had been no meaningful opportunity to bargain. (Tr. 386-89, App. at 220-223.) In September, the Union also failed to respond to BRIDGES proposal that grant money be distributed to unit employees as a bonus, and consequently, the grant expired and the funds were no longer available. (Tr. 340, 344-47, 383, App. at 192, 195-98, 219.)

Thus, Prohl's belief that a small wage offer, to the exclusion of other economic improvements demanded by the Union, and which remained "on the table," would make a strike recently authorized by unit employees more likely. (Tr. 380-82, 389, App. at 216-18, 223.) With the passage of time, and consistent with its obligations under the Act, however, BRIDGES subsequently proposed retroactive wage increases as the fear of a strike had subsided and the parties were negotiating again. (Tr. 170, 173-74, App. at 88, 90-91.)[1] When the Union made its

[1] Counsel for the Board gratuitously suggests that the retroactive, to July, 1 2007 adjustment of wages for unrepresented workers was "unprecedented." (Board Br., p. 22.) While there is no record evidence to support this observation, it nevertheless ignores that each of BRIDGES' wage proposals were offered retroactive to that same date. (Tr. 170-71, 173-74, App. at 88-89, 90-91.)

first wage demand since the previous summer on March 26, 2008, BRIDGES had already proposed one-half of a 3% retroactive wage increase in wages, and did what was required of it under the Act—it continued to negotiate with the Union. Instead of viewing these offers for what they were—evidence of BRIDGES' good faith efforts to reach agreement—the Board punishes BRIDGES by characterizing them as pretext to mask an alleged discriminatory motive. The Board cannot have it both ways.

Nowhere in its brief does the Board mention this relevant bargaining history, which accurately depicts the constraints Prohl was under at the time she refrained from extending the wage increase to unrepresented employees. BRIDGES refusal to offer this wage increase upon the Union's demand—especially in light of the wage increase to unrepresented employees—could have subjected BRIDGES to a charge of bad faith bargaining. *See NLRB v. Katz*, 369 U.S. 736, 743 (1962) (holding the duty to bargain in good faith is the duty to meet and confer with respect to wages, hours and other terms and conditions of employment). The Board, meanwhile, believes it is not its "role…to evaluate the reasonableness of the Union's…wish list in bargaining…" (Board Br., p. 20, n. 7.) It contends, however, that BRIDGES too should have been unconcerned and simply extended a 3% "take it or leave it" offer under the circumstances of this case. It fails to explain why the AFP's "wish list" and other antics were not legitimately taken into

account by BRIDGES in meeting its good faith bargaining obligations. Contrary to the Board's contentions, the Union's unreasonable and extreme demands are clearly relevant to the correct resolution of this case. The Board uses BRIDGES' good faith efforts to reach an agreement as somehow indicative of pretext, while clearly failing to consider the Union's actions throughout the course of negotiations. Negotiations are a two-way street.

As to the other business reason advanced by Prohl to explain the timing of the granted increase to unrepresented employees, both the ALJ and this Court credited Prohl's testimony that she extended the wage increase to unrepresented employees to combat rising turnover. *Arc Bridges*, 355 N.L.R.B. 1222 (2010); *Arc Bridges, Inc. v. NLRB*, 662 F.3d 1235, 1236-37 (D.C. Cir. 2011). As this Court previously found, "[t]urnover among the nonunion employees had recently been unusually high." *Arc Bridges*, 662 F.3d at 1236-37. Thus, "Prohl decided to grant the nonunion employees the planned three percent wage increase in October 2007, retroactive to July of that year." *Id.* There were, of course, no competing demands from this group for allocation of funds to any other costly improvement in employee benefits. The Board references turnover among the represented staff as well, and faults BRIDGES for failing to extend the wage increase to those employees to combat turnover among its ranks, asserting that such turnover renders Prohl's explanation of the timing as "pretextual." (Board Br., p. 22.)

BRIDGES' rationale for not granting the wage increase to represented employees in light of any retention issues, however, is easily explained as "the outcome of contract negotiations took precedence over matters of unit employee retention." *Arc Bridges*, 355 N.L.R.B. at *18. Moreover, there is no evidence that turnover amongst represented employees, however high that may have been, was at all "unusual."

D. BRIDGES Did Not Encourage Employees To Blame The Union For Its Failure To Extend The Wage Increase.

The Board erroneously mischaracterizes isolated statements from Gronendyke and Teso to hold that BRIDGES encouraged represented employees to blame the Union for BRIDGES' decision to refrain from extending the wage increase. (Board Br., p. 18.) Consistent with the Board's decision in *Orval Kent Food Co.*, 278 N.L.R.B. 402 (1986), however, absent evidence of bad faith bargaining, these remarks may be properly characterized as "a realistic statement of the effects of the bargaining obligation which [BRIDGES] incurred when the union was certified…" *Id.* at 403.

Borrowing its flawed reasoning from the underlying decision, the Board attempts to distinguish this case, asserting the employer in *Orval Kent* somehow did more **because it "proposed both merit and general wage increases at the negotiating sessions" and the union rejected those proposals.** (Board Br., p. 19-20.) BRIDGES, meanwhile, "never proposed the 3-percent increase to the Union,

nor any increase for at least 5 months after the unrepresented employees received their retroactive raise in October 2007." *Id.* at 20. This is both incorrect and irrelevant. While the record is unclear as to the precise date of BRIDGES' first retroactive wage offer, it is clear that it was "on the table" in February 2007, with further retroactive offers having been made thereafter. (Tr. 170, App. at 88.) Moreover, the record is clear that in March 2007, the AFP spokesperson confirmed again that the wage adjustment made for unrepresented employees was just "part of" the Union's proposal. (Tr. 171, App. at 89.) The Board seems to suggest BRIDGES violated Section 8(a)(5) of the Act. There is no allegation, however, that BRIDGES failed to bargain in good faith in seeking to achieve agreement with the Union.

In *Orval Kent*, the Board recognized that, because there was no allegation that the employer failed to meet its bargaining obligations under the Act, a superintendent's statement that he did not grant certain merit based increases because of the union could not support a finding of antiunion animus. 278 N.L.R.B. at 403. With this holding in mind, it is not surprising that the Board now wishes to at least suggest BRIDGES is guilty of impeding the bargaining process by refusing to offer the full 3% wage increase and "delaying" wage improvement offers until the following year—the Board's distinction from *Orval Kent* only works if there is evidence BRIDGES failed to meet its bargaining obligation under

Section 8(a)(5). Yet, as the ALJ correctly noted, the Board never alleged BRIDGES violated Section 8(a)(5) and there is no evidence to prove such a claim. *Arc BRIDGES, Inc., 355* N.L.R.B. at *11.

This Court in in *Acme Die Casting v. NLRB*, 26 F.3d 162 (D.C. Cir. 1994), a case the Board actually cited in support of its argument, is in agreement with *Orval Kent*. The Court held there was substantial evidence supporting the Board's finding that antiunion sentiment was a substantial and motivating factor in the employer's decision to defer wage increases, but only partly because the employer failed to argue before the Board that its decision was due to the employer's obligations under Section 8(a)(5). *Id.* at 167. The president of the company stated "I told you guys not to bother with the Union because that was going to happen, no raise," and added "You want the Union, go to the Union." *Id.* at 164.

The employer initially claimed it withheld the wage increase due to low profits. *Id.* For the first time on appeal, however, the employer alleged it did not extend the unilateral wage increase for fear of being charged with a Section 8(a)(5) violation. *Id.* at 167. The court recognized that some of the evidence supported a finding that the employer believed it was required to withhold the wage increases because, as here, these increases were discretionary. *Id.* Importantly, the panel stated the Court "would be reluctant to find a violation of the Act" if the decision to suspend the wage increase represented merely a good faith attempt at

compliance. *Id.* (citing *General Motors Acceptance Corp. v. NLRB*, 476 F.2d 850, 854 (1st Cir. 1973)). The court ultimately refused to overturn the Board's decision, however, because the employer failed to raise that motivation before the Board. *Id.* Conveniently, the Board left this crucial part of the decision out of its analysis when citing this opinion in support of its argument.

Thus, contrary to the Board's claims, BRIDGES, like the employer in *Orval Kent*, did more "than just make a statement about withholding merit increases from employees"—it bargained in good faith with the Union. In light of the Union's initial and exorbitant economic demands, BRIDGES requested the Union focus on economic areas its members deemed important and provided the Union with information regarding its financial condition in light of these demands. (Tr. 133-34, R. Ex. 3, App. at 67-68, 157.) The Union, meanwhile, did not back down from its initial wage and other economic demands, communicated to BRIDGES in the previous year, until March 26, 2008, when its spokesperson demanded the same wage increase given to unrepresented employees. (Tr. 154, 171, App. at 79, 89.) Of course, he admitted this was only part of the Union's proposal. (Tr. 171, App. at 89.)

Unlike in *Acme Die Casting*, BRIDGES negotiated in good faith throughout the course of bargaining and there is no evidence suggesting otherwise. In fact, Prohl's reason for refusing to extend the wage increase—as explained by her own

testimony and by the briefing sheet she distributed at the time of the decision—was to avoid an unfair labor practice charge. (Tr. 356, 370-71, R. Ex. 14, App. at 207, 210-11, 262.) As such, the Court should not characterize the above referenced statements of persons away from the negotiations as discriminatory where, consistent with *Orval Kent*, the decision to forego an immediate wage increase represented BRIDGES' good faith attempt to comply with the Act.

Yet, the Board faults BRIDGES for delaying its decision to propose any wage increase for 5 months and asserts this was done to punish represented employees. (Boards Br., p. 20.) This contention, however, is erroneous as BRIDGES had already offered a 1.5% retroactive increase before the Union made its wage demand on March 26, 2008, for the same increase granted to unrepresented employees. (Tr. 170, 173-74, 238, App. at 88, 90-91, 176.) Moreover, the Board clearly fails to consider the bargaining history of the parties. Consistent with its obligations under the Act, BRIDGES offered a 1.5% and then 2% retroactive wage increase to represented employees in the context of bargaining over a panoply of additional outstanding economic demands. (Tr. 170, 173-74, App. at 88, 90-91.) Finally, as the ALJ correctly recognized, extending "the wage increase in October 2007 would have served no useful bargaining purpose." *Arc Bridges, Inc.*, 355 N.L.R.B. at *11. As such, the Board's contention

that BRIDGES encouraged represented employees to blame the Union is clearly without merit.

E. The Board Ignores Relevant Evidence To Arrive At Its Preferred Outcome.

The Board clearly ignores relevant evidence to arrive at its preferred conclusion in this case. The Board continues to mischaracterize Prohl's authority, stating Prohl "received budgetary authority to increase wages by 3%." (Board Br., p. 6.) This is not true. As Prohl made clear, "[t]he amount of money that's available to me to establish wages is part of the budget," and Prohl only had 3% in budgeted labor costs to offer represented employees. (Tr. 343, 355-56, App. at 194, 206-07.)

In regards to Prohl's testimony, the Board contends there was no discussion of labor costs. (Board Br., p. 28, n. 11.) While not using that precise term, the record is undisputed that Prohl's reluctance to offer a 3% increase was due to her concern over having nothing left to bargain with in relation to other AFP demands. (Tr. 356, App. at 207.) While, perhaps, Counsel for the General Counsel is correct in observing that "labor costs" were not discussed at the hearing before the ALJ, the argument places form over substance and ignores unrefuted testimony, which detracts from the conclusion which the Board advocates here. (Tr. 215-16, 319, 343, App. at 166-67, 189, 194.)

The Board's contention that BRIDGES "delayed" the wage increase until the end of the certification year in the hopes of ousting the Union is incorrectly premised on its assertion that BRIDGES' board of directors *authorized* a 3% wage increase to all employees. (Board Br., p. 22.) This is simply not supported in the record. In support of what it further advances as evidence of pretext, is the Board's assertion that delay in adjustment of wages was "unprecedented," notwithstanding record evidence, which proves this is clearly wrong. (D&O 4, App. at 13, Board Br., p. 22.) Even if correct, however, the Board again ignores the "unprecedented" impact of Section 8(a)(5)'s obligations on BRIDGES' decision to refrain from unilateral action, while attempting in good faith to achieve an agreement. This Court's prior grant of BRIDGES' petition for review illustrates what would have been impermissible unilateral action were BRIDGES to have simply enacted the increase sought by the Board herein and BRIDGES has not been charged with failing to meet its bargaining obligations at any stage of these proceedings.

The Board's reliance on Teso's statement to support its argument here is also without merit. The Board acknowledges Teso's statement conveyed his belief that "no contract would be agreed upon by November," yet in an effort to support its preferred outcome, takes his statement one step further in contending it supports the notion that BRIDGES *must have* planned to oust the Union after a year of unsuccessful bargaining. (Board Br., p. 23.) This is pure speculation unsupported

by record evidence, and is in any event not connected to the decision-maker, Kris Prohl. Moreover, the Board fails to explain how such a statement can support a finding of antiunion animus when it simply does not make sense—it suffers from a clear chronology problem the Board cannot explain away.

Throughout, the Board has simply refused to consider the higher stakes imposed by the Union throughout negotiations—initial Union demands in July 2007 in the first year alone were well in excess of 25% of BRIDGES' total annual revenues. (R. Ex. 3, Tr. 214, App. at 157, 165.) The Union continued to raise the stakes by producing misleading information relating to BRIDGES financial condition and used it to secure a strike vote. (R. Ex. 6, App. at 160.) Consequently, Prohl was privileged to believe that a 3% increase, to the exclusion of all other first year economic demands, would have served no useful bargaining purpose.

The Board wholly misses the mark in this regard, contending its "role here is not to evaluate the reasonableness of the Union's, or any party's wish list in bargaining, nor the likely success of its strategy…" (Board Br., p. 20, n. 7.) Despite this "disclaimer" this is precisely what the Board has done here, at least with respect to BRIDGES, in its complete disregard of contemporaneous events as they impact the bargaining process. The Board cannot, on one hand, ignore AFP

behavior serving as the catalytic force behind BRIDGES' bargaining positions, and then criticize those decisions in a vacuum.

BRIDGES' nondiscriminatory reasons for not extending a wage increase to represented employees, at a time when the parties were negotiating over that precise issue, among many more, have not been shown to be pretextual. Clearly then, the Board's decision is not supported by substantial evidence.

CONCLUSION

For all of the foregoing reasons, BRIDGES respectfully requests that its Petition for Review of the Board's Decision and Order be granted, and that this Court deny enforcement of same.

Respectfully submitted,

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

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Dated this 8th day of October, 2015.

/s/ Raymond C. Haley III
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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ARC BRIDGES, INC.,	)	
	)	
Petitioner/Cross-Respondent,	)	
	)	CASE NOS.
v.	)	15-1113;
	)	15-1143
NATIONAL LABOR RELATIONS BOARD,	)	
	)	
Respondent/Cross-Petitioner.	)	
	)	

CERTIFICATE OF SERVICE

Pursuant to Circuit Rule 31, I hereby certify that I electronically filed the original counterpart with the Clerk of Court using the CM/ECF system, this 8th day of October, 2015, upon:

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ADDENDUM OF STATUTES, RULES, AND REGULATIONS

Relevant provisions of the National Labor Relations Act (29 U.S.C. § 151, *et seq.*) are as follows:

Sec. 8 [29 U.S.C. § 158]

> (a) It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of rights guaranteed in section 7;
>
> . . . .
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization
>
> . . . .
>
> (5) to refuse to bargain collectively with the representatives of his employees
>
> . . . .

Sec. 7 [29 U.S.C. § 157]

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.